

STATEMENT OF CLAIM

FEDERAL COURT

Court file:

BETWEEN:

ASHLEY SMITH

and

FEDERAL GOVERNMENT OF CANADA

(Court seal)

STATEMENT OF CLAIM TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

November 22, 2018

Issued by: _____
(Registry Officer)

Address of local office:
kmkm90 Sparks St. Ottawa, ON, K1A 0H9

TO: Attorney General of Canada
Justice Building
239 Wellington St.
Ottawa, On, K1A 0H8

CLAIM

The plaintiff claims:

1. The permanent return of David and James Smith to their biological mother Ashley Smith who has been their prime caregiver since their birth.
2. The Claim is for \$5,000,000.00 damages caused to Ashley Smith, David Smith and James Smith due to breach of duty by the Federal Government to protect them from severe harm.

(In consecutively numbered paragraphs, set out each allegation of material fact relied on to substantiate the claim.)

1. Ashley Smith is the biological mother of David Smith and James Smith.
2. David Smith and James Smith have been severely sexually abused by Andrew English over a long period of time.
3. Ashley has been the prime caregiver of both children from birth until November 5, 2018 when the British Columbia Family Court gave custody of both her children to Dorthy English without restriction to Andrew English the father of David Smith who Ashley Smith firmly believes has severely sexually abused both children resting on witness evidence, clinician reports, disclosure by child, videos and photo evidence.
4. Ashley Smith, mother of David Smith and James Smith, reported repeatedly to Nelson Police Services, Royal Canadian Mounted Police (police) and British Columbia Ministry of Child and Family Development (MCFD) and the British Columbia Family Court (court) that her children were abused by Andrew English father of David Smith. Police, MCFD and the court refused to regard her evidence of abuse which includes:

- a. her eye witness account of physical and psychological trauma (medically-assessed) to her children after being in the care of Andrew English
 - b. eye witness evidence of David Barron who witnessed the condition of David Smith after visits with Andrew English. Mr. Barron at the request and in the presence of Ashley Smith took photos and videos of David Smith when he came back distressed from his visits with his father Andrew English.
 - c. Report by Carmen Carter which shows in her expert opinion that James was suffering from behavioural issues resulting from previous sexual abuse.
 - d. Report by Doctor Fitzsimons which shows David Smith had been experiencing physical trauma to his foreskin.
 - e. Email from Malachy Korpi and Hanna Laaksonen Korpi which shows the odd sexualized behaviour James was experiencing before bedtime.
5. From January 2017 Ashley Smith provided play therapy, infant development, speech therapy, specialized appointments (hearing, sight) for her children because of the sexual abuse she came to believe they had experienced from Andrew English.
6. After she came to believe her children were being sexually abused by Andrew English she fled to Ontario to protect them.
7. She was ordered by the court to return to British Columbia. Once she returned to British Columbia she continued to seek help and report on the on going behavioural issues and altercations with Andrew English.
8. Family Court hearings ensued and resulted in the following three judgments:
 - i. The first court ruling January 24, 2017 gave supervised visits of child David Smith to Andrew English through a plea.
 - ii. At the last family court ruling Andrew English made allegations that I was mentally ill and unable to care for David Smith and wanted to remove the supervision, have 100 percent of the parental responsibility and almost 50 percent of the parenting time. Court ruled to remove the supervision but left me with the parental responsibility and denied additional time. An arrangement was made to move the Monday night visit to a earlier Friday pick up.
 - iii. The third court ruling November 5, 2018 resulting in removal of both children James and David and to the custody of Dorothy English aunt of Andrew English with unrestricted access to Andrew English. This final ruling to remove the children was made without any evidence or clear allegation of harm by Ashley Smith. The British Columbia Ministry of Child and Family Development (MCFD) submitted to court an unsworn report Form A that claimed that the new evidence she submitted (pictures and videos of trauma) may somehow pose a future risk to the children despite no evidence. However the MCFD refused to review this verified photographic and video evidence. The court also allowed the lawyer of Andrew

English, Janet Connolly, who was not present at the hearing to make an unsworn statement by telephone to the court judge regarding allegations by Andrew English of my mental state. Judge Seagram's court ruling was made without regard to the sworn testimony and evidence presented to the court which is referred to in paragraph 1 above. Furthermore, Ashley Smith was not permitted by the court to respond to the unsworn statement by Andrew English's lawyer and further was refused an opportunity to cite case law that supported her position to have the children remain in her custody.

9. As per the above paragraph, the Family Court of British Columbia made its ruling of November, 5, 2018 the court:

- a) did not regard sworn statement and exhibits presented to that court.
- b) did regard an unsworn report MCFD that did not contain any clear statement of harm or reference to evidence;
- c) with regard to unsworn evidence testimony from a person with no standing in the case;
- d) proceeded with re-adjudicating of Judge Brown's decision made approximately a month before to give custody to Ashley Smith
- e) denied Ashley Smith an opportunity to refute the statements made by Janet Connolly including a refusal to view the court notes from Judge Brown's decision of leaving David Smith in Ashley Smith's primary care.
- f) Denied Ashley Smith an opportunity to cite case law that support the return of children to her

10. During the Family court MCFD process described in the following, no legal rights were accorded to Ashley Smith in connection with the removal of her children by the state.

1. Section 7 Everyone has the right to life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Ashley Smith and her children were not protected from harm. The mother was traumatized by having her very young children taken and given to someone she firmly believes is sexually abusing them. And the children are traumatized by sexual abuse and separation from their mother.

Arbitrariness: The apprehension was done without warrant or evidence.

Vague: The allegations that were made without evidence were vague.

Overbreadth: Child protection is the exclusive jurisdiction of the Federal Government of Canada. The process which legally regards the constitution in

these matters is the Criminal Code of Canada and the matters are to be adjudicated in a court that the jurisdiction of *Parens patriae*.

The BC Family court is not a court of *Parens patriae* and only provides limited opportunity to protect the child as they must act according to the constitutional division of powers and within their jurisdictional statutes which have created processes that do not regard constitutional rights .

Shocks the conscience; Removing children from a loving mother and giving a sexual predator access to them without due process offends the common conscience.


Right to make full answer and defence: The mother was not allowed a credible expert witness that had important information to give to the court. Mother was not allowed to cite case law supporting her position for the children to remain with her.

2. Section 8: Everyone has the right to be secure against unreasonable search and seizure. The children were taken by force at the home of Ashley Smith where the children resided without evidence or clear allegation of harm by Ashley Smith.
3. Section 11: Any person charged with an offence has the right to:
 - a. to be informed without unreasonable delay of the specific offence. To date no such specific offence has been identified.
 - b. to be presumed innocent until proven guilty according to the law in a fair and public hearing by an independent and impartial tribunal. All the court proceedings were closed and no public was allowed to attend. Judge Seagram started when he made his ruling on November 5, 2018 to uphold the apprehension and believed evidence would be provided to the court. This acknowledges that no evidence of harm was given and in fact no specific reference to harm was given at this hearing. When I Ashley Smith stated to the Judge Seagram that he was removing her children from her with no evidence that she harmed her children Judge Seagram answered: "I believe the Ministry will provide evidence at the protection hearing".
4. Section 12: The right not to be subject to any cruel and unusual treatment or punishment. For the mother the it is extremely cruel to have your children arbitrarily taken from her care and placed with someone she is convinced is sexually abusing them. This is extremely traumatizing. And for the children the trauma caused by the loss of contact with their mother and the cruelty of sexual abuse is obvious.

11. The children are still in grave danger as they were placed by the court with Andrew English who has been severely sexually abusing David since birth and James since 2 years old.
12. The Crown has a duty of care under section 91.27 of the Constitutional Act of Canada to protect David, James and Ashley from the kind of harm they were subject to but failed to do so. No police investigation of the evidence was provided and the MCFD did not fulfill this mandate by default as they did not investigate the evidence of this matter either. And Andrew English in alliance with the police and MCDF harmed the family further by removing the children from their mother without out cause based on allegations that she was mentally ill because she made complaints of sexual abuse.
13. The psychological, emotional and physical harm to Ashley, David and James is severe.

The plaintiff proposes that this action be tried at Ottawa, Ontario.

November 22, 2018



(Signature of solicitor or plaintiff)

267 Montreal Road,
Ottawa, ON, K1L 6C4
Phone: 807-245-7355
Fax: 866-554-9981

FEDERAL COURT

BETWEEN:

ASHLEY SMITH

and

FEDERAL GOVERNMENT OF CANADA

AFFIDAVIT OF SERVICE

I, Ashley Smith, of the City of Ottawa, SWEAR THAT:

(for personal service on an individual, corporation, etc.)

1. On November 23, 2018 at 2:45 PM, I served the The Federal Government of Canada with a Statement for claim by Ashley Smith by leaving a copy with the Attorney General of Canada at 131 Queen St. Ottawa, ON. (The security at 239 Wellington advised that services was to be made at 131 Queens St. as this is the legal department location.


A copy was left with the RECEPTIONIST at 131 Queens St. Ottawa, ON. The RECEPTIONIST stated upon receipt of the statement of Claim by Ashley Smith that she would deliver it to the legal department on the 7th floor.

2. I was able to identify the person by means of her statement that she was authorized to accept service of documents for the Attorney General.


(for non-personal service by fax on a solicitor)

And I served Federal Government of Canada with A Statement of Claim by Ashley Smith by sending a copy by fax on November 23, 2018 at 410 PM to Attorney General of Canada, solicitor for the Federal Government of Canada, at 613-954-1920.

Sworn before me at the City of Ottawa on November 23, 2018.



Commissioner for Taking Affidavits
(or as the case may be)



(Signature of Deponent)

Jane Scharf
Licensed Paralegal
#P06406

Fax Message Transmission Result to +1 (613) 9541920 - Sent

RingCentral <service@ringcentral.com>

Fri 2018-11-23, 1:26 PM

To: Jane Scharf <mjslegalservices@outlook.com>

Fax Transmission Results

Here are the results of the 7-page fax you sent from your phone number (866) 544-9981:

Name	Phone Number	Date and Time	Result
	+1 (613) 9541920	Friday, November 23, 2018 at 04:25 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
AS statement of claim23112018.pdf	Success